UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE BECHEN, RONALD BIENDSEIL, RON BOONE, VERA BOONE, ELVIRA BUMPUS, EVANJELINA CLEEREMAN, SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT ECKSTEIN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD KRESBACH, RICHARD LANGE, GLADYS MANZANET, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants,

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

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PLAINTIFFS' RESPONSES TO DEFENDANTS' STATEMENTS OF CONTESTED FACTS AND PROPOSED CONCLUSIONS OF LAW

VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

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Baldus Plaintiffs and Voces de la Frontera Plaintiffs (collectively, "Plaintiffs") respond as follows to the Statements of Contested Facts and Proposed Conclusions of Law submitted by the Government Accountability Board Defendants and the Intervenor-Defendants in the Joint Pretrial Report (Dkt. 158). Plaintiffs' counter-designations of deposition testimony are attached as **Exhibit A**.

I. PLAINTIFFS' RESPONSES TO STATEMENTS OF CONTESTED FACTS BY GAB DEFENDANTS AND INTERVENOR-DEFENDANTS

A. Delayed Voting (Act 43).

392. **STATEMENT:** The Intervenor-Defendants join the Government Accountability Board's statement of contested facts to the extent they address Act 44.

RESPONSE: This is not a contested fact requiring a response.

393. **STATEMENT:** In 2002, Democrats proposed four different maps with delayed voting effects shown in **Table 18**.

RESPONSE: Plaintiffs do not stipulate because the delayed voting effect of maps proposed by Democrats in 2002 is not relevant to the legal question of whether Act 43 unconstitutionally disenfranchises voters.

394. **STATEMENT:** **Table 19** reflects delayed voting effects in other states in the present redistricting cycle.

RESPONSE: Plaintiffs do not stipulate because the delayed voting effect in other states—where statutory and constitutional requirements for redistricting, and the size and composition of legislative districts, are different than in Wisconsin—is not relevant to the legal question of whether Act 43 unconstitutionally disenfranchises voters.

395. **STATEMENT:** In the summer of 2011, senators in nine of the sixteen even-numbered Senate districts were subject to recall. Expert Report of Ronald Keith Gaddie ("Gaddie Report ") (Trial Exhibit 30) at 5.

PLAINTIFFS' RESPONSE: Plaintiffs stipulate to the facts in paragraph 395 but dispute their relevance to the legal question of whether Act 43 unconstitutionally disenfranchises voters.

396. **STATEMENT:** A total of 164,843 persons who reside in districts in which they would otherwise experience delayed voting also lived in districts where a recall was conducted in 2011. Accounting for the use of the recall, the actual period between voting for a Senator for these 164,843 persons is just three years, not six. Thus, Act 43 will cause only 134,861 persons to wait six years between opportunities to vote for a Senator. *Id.*

RESPONSE: Plaintiffs stipulate to the fact that 164,843 persons moved by Act 43 from even- to odd-senate districts live in districts in which recall elections were conducted in 2011. However, plaintiffs dispute the relevance of the recall elections to the legal question of whether Act 43 unconstitutionally disenfranchises voters.

397. **STATEMENT:** The delayed voting or disenfranchisement effects of the last three redistricting efforts appear in **Table 17**.

RESPONSE: Plaintiffs stipulate in part to paragraph 397 and Table 17. Plaintiffs do not stipulate to the last column in Table 17, "2011 Act 43, Net," because the recall elections are not relevant to the legal question of whether Act 43 unconstitutionally disenfranchises voters.

398. **STATEMENT:** In 1982, the map drawn by the Federal District Court moved 713,225 people (or about 15.2 percent of all persons in Wisconsin according to the 1980 census)

into districts where voters would wait six years between opportunities to vote for state senator. *Wisconsin State AFL-CIO v. Elections Board*, 543 F. Supp. 630, 659 (E.D. Wis. 1982).

RESPONSE: Plaintiffs stipulate to paragraph 398.

399. **STATEMENT:** In 1992, the map drawn by the Federal District Court moved 257,000 persons (or about 5.25 percent of all persons in Wisconsin according to the 1990 census) into districts where voters would wait six years between opportunities to vote for state senator.

RESPONSE: Plaintiffs stipulate to paragraph 399.

400. **STATEMENT:** In 2002, the Federal District Court map moved 171,163 persons (3.14% of the state population according to the 2000 census) into districts where voters would wait six years between opportunities to vote for state senator.

RESPONSE: Plaintiffs stipulate to paragraph 400.

B. Core Retention.

401. **STATEMENT:** Core retention measures the extent to which constituencies are maintained or disrupted by a proposed map. There are several ways to measure core constituency retention, including the following:

a. *Largest Constituency Core Retention*: In the new district, what is the largest proportion in the district that was previously together in one particular, previous district?

RESPONSE: Plaintiffs stipulate that "largest constituency core retention" is a meaningful metric for core retention. However, plaintiffs contend that a more meaningful metric would measure the largest proportion in the district that was previously together in the preexisting district of the same number.

b. *Incumbent Core Retention*: In the Incumbent's new district, what proportion of the population comes from their old district? Gaddie Report at ¶ 8 (Tr. Ex. 58).

RESPONSE: Plaintiffs do not stipulate that "incumbent core retention" is a meaningful metric for core retention.

402. **STATEMENT:** Under Act 43, the average Largest Constituency Core Retention is 66.30 percent in the Assembly, with a low of 30.88 percent and a high of 99.91 percent. The average Senate Largest Constituency Core Retention is 78.82 percent with a low of 57.89 percent and a high of 99.92 percent. **Table 23** illustrates the Largest Core Retention scores for the Assembly and Senate districts created by Act 43. Gaddie Report at ¶ 1 (Tr. Ex. 58).

RESPONSE: Plaintiffs do not stipulate because their expert calculated different figures for low and average core retention.

403. **STATEMENT:** In the Assembly, average Incumbent Core Retention is 61.72 percent, with a low of 8.55 percent and a high of 99.91 percent. The average Incumbent Core Retention for Democratic incumbents is 54.74 percent, and 65.88 percent for Republican incumbents. The lowest Democratic Incumbent Core Retention is 8.55 percent, the highest is 99.91 percent; for Republicans, the low is 17.74 percent and the high is 97.67 percent. Gaddie Report at ¶ 8 (Tr. Ex. 58).

RESPONSE: Plaintiffs do not stipulate because Incumbent Core Retention is not a meaningful metric for core retention.

404. **STATEMENT:** In the Senate, average Incumbent Core Retention is 78.23 percent, with a low of 42.03 percent and a high of 99.92 percent. Democratic Senate Incumbent Core Retention averages 78.84 percent, compared to 77.64 percent for Republican

incumbents. The low Democratic Senate Incumbent Core Retention score is 42.03 percent, the high is 99.53 percent. Among Republican Senate incumbents, the low is 57.97 percent; the high is 99.92 percent. Gaddie Report at ¶ 8 (Tr. Ex. 58).

RESPONSE: Plaintiffs do not stipulate because Incumbent Core Retention is not a meaningful metric for core retention.

405. **STATEMENT: Table 24** illustrates the Incumbent Core Retention scores for the Assembly and Senate districts created by Act 43. (Diez Report)

RESPONSE: Plaintiffs do not stipulate because Incumbent Core Retention is not a meaningful metric for core retention.

C. Racial Fairness And Treatment Of Minority-Majority Districts.

406. **STATEMENT:** No part of Wisconsin is subject to Section 5 of the Voting Rights Act.

RESPONSE: Plaintiffs stipulate to paragraph 406.

1. African-American Majority-Minority Districts

407. **STATEMENT:** African Americans are 6.3 percent of the Wisconsin statewide population and 26.8 percent of the population of Milwaukee County. Over 70 percent of the 358,280 African American Wisconsinites are in Milwaukee County, and then largely in the City of Milwaukee and north of the East-West Freeway. *Id*. at 3.

RESPONSE: Plaintiffs stipulate in part to paragraph 407, and state that the African-American population is concentrated in the north-central part of the City of Milwaukee and that area is broadly bounded by the Milwaukee County line on the north edge, variously the Milwaukee river and the Canadian National Rail Line on the east, I-94 on the southern edge and Highway 41 and the NW county line to the west. Pls.' Tr. Ex. 55 (Mayer Report) at 23.

408. **STATEMENT:** The Milwaukee area is the only part of the State of Wisconsin with a sufficiently large and concentrated African-American population so as to be able to draw Assembly or State Senate districts containing an African-American population or voting age population majority. Expert Report of Bernard Grofman ("Grofman Report") (Tr. Ex. 140) at ¶ 7.

RESPONSE: Plaintiffs do not stipulate to paragraph 408.

409. **STATEMENT:** Under the 2002 court-drawn plan, Assembly Districts 10, 11, 16, 17 and 18, have been continuously represented by an African-American since the plan was put into place. Moreover, all major candidates in the Democratic primary in those districts have been black and the winner of the Democratic primary has then gone on to win the general election with between 91 percent and 100 percent of the vote—most commonly with 100 percent of the vote. *Id*. at ¶ 12(b).

RESPONSE: Plaintiffs do not stipulate to paragraph 409.

410. **STATEMENT:** Under the 2002 court-drawn plan, in Assembly District 12, which has not been a majority black voting age population district during the decade (having begun at 32.77 percent black VAP according to the 2000 census, and ending up at 48.99 percent Black VAP according to the 2010 census), all winners of the Democratic primary have been white (with the last contested Democratic primary in 2004). All winners of the Democratic primary in Assembly District 12 over the past decade have gone on to win the general election with vote shares ranging from 67 percent to 100 percent, with the last contested general election in 2004. *Id*. at ¶ 12(c).

RESPONSE: Plaintiffs do not stipulate to paragraph 410.

411. **STATEMENT:** During the period 2002 to 2010, an African American won every primary and general election in Senate Districts 4 and 6, and the included Assembly Districts, in which there was an African American candidate with only one exception. *Id*. at ¶ 12(a).

RESPONSE: Plaintiffs do not stipulate to paragraph 411.

412. **STATEMENT:** In 2002, the federal court created five majority African American Assembly Districts where minority voters elect a candidate of choice (5.05 percent of seats statewide); of the Senate districts created by the court in 2002, two are majority African American districts where minority voters elect a candidate of choice (6.06 percent of seats statewide). Gaddie Report at 3.

RESPONSE: Plaintiffs do not stipulate to paragraph 412.

413. **STATEMENT:** 2011 Wisconsin Act 43 created six majority African American Assembly districts and two majority African American Senate districts. Of the six Assembly districts, five are between 60.4 percent and 61.9 percent African American voting age population (VAP), and the sixth is 51.5 percent African American VAP. *Id*.; see also Gaddie Report at pg. 14 (Table 3); Grofman Report at Exhibit B.

RESPONSE: Plaintiffs do not stipulate to paragraph 413.

414. **STATEMENT:** **Table 8** shows the racial demographic data on population and voting age population characteristics of the court-drawn 2002 African American majority-minority legislative districts, using 2010 census data.

RESPONSE: Plaintiffs do not stipulate to paragraph 414 and do not stipulate the accuracy of the racial demographic data contained in Table 8.

415. **STATEMENT:** Even if the African-American population in Assembly Districts 10, 11, 16, 17, and 18 were redistributed so that each of these five districts were at exactly 55 percent black voting age population, the African American population is not large enough to create a seventh majority-minority African-American Assembly district. Expert Report of Kenneth R. Mayer ("Mayer Report") (Tr. Ex. 55) at 25; *see also* Mayer Depo. (Dkt. 147) at 193:19-23.

RESPONSE: Plaintiffs do not stipulate to paragraph 415.

416. **STATEMENT:** Senate Districts 4 and 6 (as created by Act 43) contain 98.4 percent of the African-American population found in either Senate Districts 4 or 6 as created by the federal court in 2002. Grofman Report at ¶ 9(a); see also Expert Report of John Diez ("Diez Report") (Tr. Ex. 31) at 2 (referencing data provided by the State of Wisconsin Legislative Technology Service Bureau).

RESPONSE: Plaintiffs do not stipulate to paragraph 416.

417. **STATEMENT:** In Milwaukee County, the 2002 court-drawn baseline map had sixteen Assembly districts wholly within the county, and another three districts that crossed the county line; the county population (940,164) would have accommodated seventeen whole districts plus a third of another. African-American majority districts constituted 28.8 percent of the potential whole districts that could have been crafted in Milwaukee County, compared to 24.6 percent African-Americans in the county population. African-American majority districts were 26.3 percent of all districts that were wholly or partially in Milwaukee County. Gaddie Report at 4.

RESPONSE: Plaintiffs do not stipulate to paragraph 417.

418. **STATEMENT:** Act 43 had thirteen Assembly districts wholly within the county, and another eight districts that crossed the county line; the county population (947,735) would have accommodated sixteen whole districts plus half of another. African-American majority districts constitute 36.4 percent of the potential whole districts that could have been crafted in Milwaukee County, compared to 26.8 percent African-Americans in the county population. African-American majority districts are 28.6 percent of all districts that are wholly or partially in Milwaukee County. *Id.*

RESPONSE: Plaintiffs do not stipulate to paragraph 418.

D. Treatment of Political Subdivisions.

419. **STATEMENT:** **Table 20** reflects the present and historical local governments split by assembly or senate districts.

RESPONSE: Plaintiffs do not stipulate because plaintiffs' expert has been unable to verify the data in Table 20.

PLAINTIFFS' RESPONSE:

E. Incumbent Pairings.

420. **STATEMENT:** The incumbent pairings and the associated core retentions of the involved incumbents appear in **Table 25**.

RESPONSE: Plaintiffs stipulate to paragraph 420 and Table 25.

F. Hispanic Majority-Minority Assembly Districts.

421. **STATEMENT:** The state population is 5.9 percent Hispanic origin, and Milwaukee County is 13.3 percent Hispanic. Milwaukee County comprises 37.5 percent of the 335,532 Hispanic Wisconsinites, and that population has its greatest concentration south of the East-West Freeway. *Id.* at 3.

RESPONSE: Plaintiffs stipulate to numbers contained in paragraph 421. Plaintiffs do not stipulate to the name of the East-West Freeway, and contend that it should be identified as I-94.

422. **STATEMENT:** The Milwaukee area is the only part of the state with a sufficiently large and concentrated Hispanic population that would allow creation of Assembly districts that contain a Hispanic population or voting age population majority. Grofman Report at ¶ 16.

RESPONSE: Plaintiffs stipulate that the Milwaukee area is *currently* the only part of the state with a sufficiently large and concentrated Latino population that would allow creation of an assembly *district* (singular, not plural) that contains a majority Latino voting age population. *See* Tr. Ex. 55 (Mayer Report) at 22-23.

423. **STATEMENT:** Based on data from the 2010 census, the Hispanic population is not large enough and geographically concentrated enough to create a Hispanic population majority Senate district. *Id*. at ¶ 17(b).

RESPONSE: Plaintiffs stipulate to paragraph 423, but do not stipulate to its relevance regarding whether Act 43 violates section 2 of the Voting Rights Act.

424. **STATEMENT:** Under the 2002 court-drawn map there was one majority Hispanic Assembly seat and no majority Hispanic Senate seats. Gaddie Report at 3.

RESPONSE: Plaintiffs stipulate that under the 2002 court-drawn map there was one majority Latino assembly district seat *as a percentage of the total population* and no majority Latino senate district seats as a percentage of the total population.

425. **STATEMENT:** Under the 2002 court-drawn plan, Assembly District 8 has been continuously represented by a Hispanic Assembly member since the plan was put into place. All

candidates in the Democratic primary in that district have been Hispanic, and the winner of the Democratic primary has then gone on to win the general election with 100 percent of the vote, i.e., in an uncontested election. The last contested election involving a Republican in the district was 1998 (under the 1992 plan). In that year the Hispanic candidate won the general election with 76 percent of the vote. Grofman Report at ¶ 18.

RESPONSE: Plaintiffs stipulate that under the 2002 court-drawn plan, AD 8 has been continuously represented by a Latino assembly member since the plan was implemented. Plaintiffs do not stipulate that all candidates in the Democratic primary in that district have been Latino and do not stipulate that the winner of the Democratic primary has then gone on to win the general election with 100 percent of the vote, *i.e.*, in an uncontested election. Plaintiffs stipulate that the last contested election involving a Republican in the district was 1998 (under the 1992). Plaintiffs do not stipulate that in 1998 the Latino candidate won the general election with 76 percent of the vote. *See* Historical Vote Totals for Assembly Districts 8 and 9.

Historical Vote Totals for Assembly Districts 8 and 9

2002 General Election: Colón (Unopposed)	3,291	AD 8
2002 General Election: Zepnick (Unopposed)	8,254	AD 9

2004 Primary Election: Colón (Unopposed)	1,311	AD 8
2004 Primary Election: Zepnick (Unopposed)	3,159	AD 9

2004 General Election: Colón (Unopposed)	8,815	AD 8
2004 General Election: Zepnick (Unopposed)	14,776	AD 9

2006 Primary Election: Colón (Unopposed)	705	AD 8
2006 Primary Election: Zepnick (Unopposed)	1,978	AD 9

2006 General Election: Colón (Unopposed)	4,604	AD 8
2006 General Election: Zepnick (Unopposed)	9,911	AD 9

2008 General Election: Colón	8,743	AD 8
2008 General Election: Zepnick	14,068	AD 9

2010 General Election: Zamarippa	4,284	AD 8
Rivas (Ind.)	678	
2010 General Election: Zepnick (Unopposed)	7,354	AD 9

426. **STATEMENT:** 2011 Wisconsin Act 43 includes two majority Hispanic Assembly districts, one of which is 60.5 percent Hispanic VAP, and the other is 54.0 percent Hispanic VAP. Gaddie Report at 4.

RESPONSE: Plaintiffs stipulate that 2011 Act 43 created AD 8 with 60.5 percent of Latino voting age population and AD 9 with 54.0 percent Latino voting age population. Plaintiffs do not stipulate that 2011 Wisconsin Act 43 created two majority Latino assembly districts. Because the relevant metric for an effective majority Latino assembly district is citizen voting age population Assembly Districts 8 and 9 (as created by Act 43) do not contain enough citizen voting age Latinos to constitute a numerical majority. *See* Tr. Ex. 55 (Mayer Report) at 21-22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

427. **STATEMENT:** The Hispanic citizen voting age population in Assembly District 8 (created by Act 43), as calculated by Prof. Mayer, is 49.6 percent. Mayer Report at 22.

RESPONSE: Plaintiffs stipulate that Professor Mayer calculated the Latino citizen voting age population in AD 8, using the 2008 ACS data (with a noncitizenship rate of 35.75 percent), to be 49.6 percent. However, Professor Mayer also calculated the Latino citizen voting age population in AD 8, using the 2005-2009 five-year ACS data (with a noncitizenship rate of 42 percent), and found it to be 47.07 percent. Therefore, plaintiffs contend that Latinos

who are U.S. citizens comprise between 47.07 percent and 49.6 percent of the voting age population living in AD 8. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

428. **STATEMENT:** From 2000 to 2010, Wisconsin's total population grew 6 percent (from 5,363,675 to 5,686,986). Expert Report of Peter A. Morrison ("Morrison Report") (Tr. Ex. 32) at ¶ 6.

RESPONSE: Plaintiffs stipulate to paragraph 428, but do not stipulate to its relevance regarding whether Act 43 violates section 2 of the Voting Rights Act.

429. **STATEMENT:** From 2000 to 2010, Wisconsin's Hispanic population increased 74 percent (from 192,921 to 336, 056). The Hispanic share of Wisconsin's total population rose as a consequence from 3.6 percent to 5.9 percent. *Id*.

RESPONSE: Plaintiffs stipulate to paragraph 429, but do not stipulate to its relevance regarding whether Act 43 violates section 2 of the Voting Rights Act.

430. **STATEMENT:** Since 2000, Hispanic numbers within Milwaukee County have registered an overall increase of nearly 44,000 in a County that gained barely 8 thousand residents overall between 2000 and 2010. *Id*. at ¶ 8.

RESPONSE: Plaintiffs stipulate that the total population in Milwaukee County increased from 940,164 in 2000 to 947,735 in 2010. Plaintiffs stipulate that the total Latino population in Milwaukee County increased from 82,406 in 2000 to 126,039 in 2010. Tr. Ex. 32 (Morrison Report) at 4, Table 1. Plaintiffs do not stipulate to the relevance of paragraph 430 regarding whether Act 43 violates section 2 of the Voting Rights Act.

431. **STATEMENT:** The Census Bureau's American Community Survey ("ACS") documents an annual influx of 1,812 Hispanic in-migrants to Milwaukee County from another

state plus a further 1,140 Hispanic in-migrants from elsewhere in Wisconsin, for a total Hispanic influx of 2,952 domestic in-migrants into Milwaukee County. The ACS data also register a further annual influx of 1,500 Hispanic in-migrants from abroad. The corresponding domestic outflow of Hispanics moving from Milwaukee County to a different county or state totals 2,791. *Id*. at ¶¶ 16-17.

RESPONSE: Plaintiffs' expert cannot verify the data used to calculate the numbers in paragraph 431, therefore, plaintiffs do not stipulate to paragraph 431. Plaintiffs also do not stipulate to its relevance regarding whether Act 43 violates section 2 of the Voting Rights Act.

432. **STATEMENT:** The net effect of these two domestic migration counterflows (4,452 minus 2,791) increases the County's resident population by 1,661 Hispanics each year. *Id*.

RESPONSE: Plaintiffs do not stipulate to paragraph 432 because, *e.g.*, the numbers calculated by defendants' expert assumes the annual increase of Latinos is constant from year-to-year. Plaintiffs also do not stipulate to the relevance of paragraph 432 as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

433. **STATEMENT:** This net addition of as many as 1,661 incoming Hispanics to Milwaukee County's population of 126,039 resident Hispanics accounts for what is at most a 1.3 percent annual increase in the number of resident Hispanics. That numerical increase translates into a 0.16 percentage-point increase per year in Hispanics' share of Milwaukee County's population (assuming no foreign-bound out-migration). That is, if net migration continues at its present level, Hispanics' current share of population countywide would grow from 13.3 percent in 2010 to 14.9 percent by 2020. *Id*. at ¶ 18.

RESPONSE: Plaintiffs do not stipulate to paragraph 433 because, *e.g.*, the numbers calculated by defendants' expert assumes the annual increase of Latinos is constant from year-to-year, and does not account for foreign-bound out-migration. Plaintiffs also do not stipulate to its relevance as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

434. **STATEMENT:** Proportionally more Hispanics are in the under-18 age range relative to non-Hispanics (39 percent compared with 23 percent). Conversely, proportionally fewer Hispanics are in the over-65 age range relative to non-Hispanics (3 percent compared with 13 percent), ages at which significant numbers of eligible voters die off. Furthermore, Hispanics under age 18 are predominantly citizens, whereas many adult Hispanics have yet to become citizens. *Id*. at ¶ 21.

RESPONSE: Plaintiffs stipulate to paragraph 434, but plaintiffs do not stipulate to its relevance as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

435. **STATEMENT:** Professor Mayer testified that, as of 2010, the Hispanic citizen voting age population in Assembly District 8 as drawn by Act 43 is approximately 49.6%, based on ACS data. Mayer Report at 22.

RESPONSE: Plaintiffs stipulate that Professor Mayer calculated the Latino citizen voting age population in AD 8, using the 2008 ACS data (with a noncitizenship rate of 35.75 percent), to be 49.6 percent. However, Professor Mayer also calculated the Latino citizen voting age population in AD 8, using the 2005-2009 five-year ACS data (with a noncitizenship rate of 42 percent), and found it to be 47.07 percent. Therefore, plaintiffs contend that Latinos who are U.S. citizens comprise between 47.07 percent and 49.6 percent of the voting age population living in AD 8. *See* Tr. Ex. 55 (Mayer Report) at 22; Tr. Ex. 60 (Mayer Rebuttal) at 11.

436. **STATEMENT: Table 15** describes the growth of the Hispanic community in Assembly Districts 8 and 9.

RESPONSE: Plaintiffs do not stipulate to paragraph 436 or Table 15 because plaintiffs' expert, Professor Mayer, does not agree with the method used to calculate the numbers in Table 15.

437. **STATEMENT:** Jesus "Zeus" Rodriguez is a member/leader of a non-partisan group called the Hispanics for Leadership. Rodriguez Depo. (Dkt. 142) at 19:17-20:2. This group was formed to advocate in favor of representation for the Latino community at all levels of government in Wisconsin. *Id*.

RESPONSE: Plaintiffs do not stipulate that Mr. Rodriguez testified that he was a "member/leader" of Hispanics for Leadership. Mr. Rodriguez stated in his deposition "[t]hat was a group that we put together. There was no formal organization. It was very clear. It was just a group of local business people and educators and community activists." *Id.* at 19:21-24. Plaintiffs also do not stipulate to the relevance of paragraph 437 as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

438. **STATEMENT:** Mr. Rodriguez was contacted by the republican map drawers in late June or early July, 2011 to see if he would be interested in commenting on the proposed redistricting maps for State Assembly Districts 8 and 9 and State Senate District 3, all of them located in the southern part of Milwaukee. *Id*. at 31:17-32:21.

RESPONSE: Plaintiffs do not stipulate that Mr. Rodriguez was contacted by Republican map drawers. Mr. Rodriguez testified that he was contacted by Mr. Jensen, a former Republican legislator (and not a map drawer), and stated regarding the communication "I can't remember when he had actually called me ... but he had called me and asked me if I was

interested and if there was a need to look at the south side ....; if I would be interested in looking at them .... " *Id*. at 31:19-32:25. Plaintiffs also do not stipulate to the relevance of paragraph 438 as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

439. **STATEMENT:** On July 8, 2011, Mr. Rodriguez and Hispanics for Leadership were presented with two alternative maps for Assembly Districts 8 and 9 (the original legislation in SB148 and Amendment 1). *Id*. at 30:23-31:10. The first alternative had the Hispanic Voting Age Population (HVAP) at 57 percent/57 percent for Assembly Districts 8 and 9, and the second was a 64 percent/50 percent split. *Id*. at 41:3-9.

RESPONSE: Plaintiffs do not stipulate to Mr. Rodriguez's testimony that "Hispanics for Leadership were presented with two alternative maps ...." Mr. Rodriguez testified that he received an email from Mr. Jensen attaching an alternative map for two Hispanic districts, and Mr. Jensen said Mr. Rodriguez could "contact Tad Ottman for an explanation ... [or] contact Joe Handrick." *Id*. at 31:3-31:10. There is no evidence that Mr. Jensen knew anything about the Hispanics for Leadership. Plaintiffs do not stipulate that the percentages cited above for Latino Voting Age Population are supported by the testimony of Mr. Rodriguez. Plaintiffs also do not stipulate to the relevance of paragraph 439 as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

440. **STATEMENT:** After review of the two proposals, Mr. Rodriguez proposed a third alternative—one in between the two in which the percentage of HVAP was 60.5 percent/54 percent. *Id*. at 48:8-16. Hispanics for Leadership endorsed that third alternative. *Id*. at 11-21. They felt confident with the HVAP in Assembly District 8 and wanted to increase the HVAP in Assembly District 9. *Id*. at 49:16-50:1. Mr. Rodriguez was not concerned about the potential fracturing of the Latino community by the boundaries of Assembly Districts 8 and

9. *Id*. at 98:20-99:17. He does not believe that Assembly Districts 8 and 9 fracture the Latino community's voting strength. *Id*. at 152:23-154:10.

RESPONSE: Plaintiffs do not stipulate that Mr. Rodriguez testified to proposing a third alternative. Mr. Rodriguez stated "[a]fter we looked at all of the stuff, I'm pretty sure that's when I said that we'd rather have something in between the two alternatives that they had." *Id*. at 48:8-11. Mr. Rodriguez testified that he only spoke with two people related to the Hispanics for Leadership "group" regarding the proposals. He said "the people who I have—who helped me talk with people over the couple of months period was Victor Huyke and Gregorio Montoto." *Id.* at 22:11-14. He went on to state that "because we wanted to have a stronger second—we were very confident, the people that—like I said, Gregorio and Victor and the people we had spoken to about it .... " *Id.* at 49:16-19. Plaintiffs do not stipulate to Mr. Rodriguez's belief that Assembly Districts 8 and 9 do not fracture the Latino community's voting strength because the testimony was solicited by a question that was improper as to its form and foundation. *Id*. at 153:2-6 (objection as to form and foundation).

441. **STATEMENT:** On July 13, 2011, Mr. Rodriguez went to Madison, Wisconsin to attend the hearing on what became Acts 43 and 44, to testify on behalf of Hispanics for Leadership in support of the 60.54 percent/50 percent map for the 8th and 9th Assembly Districts. *Id*. at 158:13-159:3. He was unable to remain to testify in person, but he did submit written testimony in support. *Id*. at 159-160. Deposition Exhibit 1002. *Id*.

RESPONSE: Plaintiffs do not stipulate to the relevance of paragraph 441 as it relates to whether Act 43 violates section 2 of the Voting Rights Act.

442. **STATEMENT:** Mr. Rodriguez was concerned that if you decreased the HVAP in Assembly District 8 to compensate for the lower Citizen Hispanic Voting Age Population, that

you would also decrease the HVAP in Assembly District 9 and potentially decrease the Latino influence in that second district. *Id*. at 131:11-132:20. His primary concern was that the Hispanic community be able to elect a candidate of their choice. *Id*. at 132:25-133:8. Due to his belief that the Hispanic community was increasing in number, Mr. Rodriguez was comfortable with a lower CVAP in Assembly District 8. *Id*. at 133:9-20. It was equally important that the HVAP numbers for Assembly District 9 increase. *Id*. at 137:22-25.

RESPONSE: Plaintiffs do not stipulate to paragraph 442 because Mr. Rodriguez has provided no basis for his opinion regarding Latino voting age population or Latino citizen voting age population. *See id.* at 189:12-192:10.

443. **STATEMENT:** Based upon Mr. Rodriguez's knowledge of the Latino community, the following candidates for office are Latino: Victor Huyke, Patricia Zamarripa, H. Nelson Goodson, Robert Escamilla, Laura Manriquez, Jose Guzman, JoCasta Zamarripa, Angel Zanchez and Romona Rivas. *Id*. at 165:2-166:17.

RESPONSE: Plaintiffs do not stipulate to paragraph 443 because the testimony was solicited by a question that was improper as to form. Plaintiffs also do not stipulate to the relevance of paragraph 443 as it relates to whether Act 43 violates section 2 of the Voting Rights Act. *Id*. at 165: 11-13.

444. **STATEMENT:** On behalf of the Latino community, Mr. Rodriguez was also involved in the redistricting process in Milwaukee County. *Id*. at 17:11-18:8; 154:11-24. In that process, there was much more time to evaluate the maps. However, even though he was given five days to respond to the proposals regarding state-wide redistricting as compared to the months for Milwaukee County, he felt he was more effective with the state-wide process because they took his input and changed the maps. *Id*. at 170:14-171:9.

RESPONSE: Plaintiffs do not stipulate to Mr. Rodriguez's testimony that he was involved in the redistricting process "on behalf of the Latino community ...." While Mr. Rodriguez testified that was "[h]elping get proper representation for the Latino community on the County level," he also stated that Hispanics for Leadership does not speak for the entire Latino community in Milwaukee. *Id.* at 17:11-16, 143:8-10. He stated that his "role was just, you know, looking at the evidence, appealing to the board and other officials who had some impact on re-looking at the – what they had done and to change it." *Id.* at 154:17-20. Plaintiffs do not stipulate that Mr. Rodriguez testified that he was more effective with the state-wide process because they took his input and changed the map. Mr. Rodriguez's actual testimony is that he "can compare the outcome because the map that was originally introduced on behalf of the City at the very beginning, all the community input made no difference in what they passed. They passed the original one that was written from the beginning." *Id.* at 171:2-9.

445. **STATEMENT:** Mr. Rodriguez is aware of the group, Voces de la Frontera. *Id*. at 141:13-16. Just as Hispanics for Leadership do not speak for the entire Latino community in Milwaukee, Voces de la Frontera does not either. *Id*. at 143:8-10. This is, quite simply, because not all Latinos have the same political beliefs or economic interests. *Id*. at 144:22-145:3.

RESPONSE: Plaintiffs also do not stipulate to the relevance of paragraph 445 as it relates to whether Act 43 violates section 2 of the Voting Rights Act. Regarding the influence of Hispanics for Leadership, Mr. Rodriguez stated in his deposition, Hispanics for Leadership was not a "formal organization …. It was just a group of local business people and educators and community activists." *Id.* at 19:21-24.

446. **STATEMENT:** The Wisconsin Legislature also consulted with MALDEF in drafting Act 43. *Id*. at 188:8-18.

RESPONSE: Plaintiffs stipulate that during the course of the map drawing, the MALDEF Chicago regional office was consulted. *See* Stipulated Findings of Fact (Dkt. 158) ¶ 147.

447. **STATEMENT:** Under Act 43, Hispanic majority Assembly districts are 2.02 percent of all districts in the state, 12.1 percent of potential whole districts that might be drawn in Milwaukee County, and 9.5 percent of all districts that are wholly or partially in Milwaukee County. Gaddie Report at 4.

RESPONSE: Plaintiffs stipulate to the percentages in paragraph 447, but plaintiffs do not stipulate that 2011 Wisconsin Act 43 created two majority Latino assembly districts. Because the relevant metric for an effective majority Latino assembly district is citizen voting age population, Assembly Districts 8 and 9 (as created by Act 43) do not contain enough citizen voting age Latinos to constitute a numerical majority. *See* Tr. Ex. 55 (Mayer Report) at 21-22; *see* Tr. Ex. 60 (Mayer Rebuttal) at 11-12.

G. Map Creation Considerations.

448. **STATEMENT:** When drawing redistricting maps in Wisconsin, the map drawers were advised to make certain to address the Voting Rights Act concerns (in Milwaukee County) first so that they wouldn't come back to that point and be unable to address the concerns. Handrick Depo. (Dkt. 137) at 398:1-13. The map drawers also took into account the malapportionment between Milwaukee and Dane County. *Id*. at 398:17-401:7.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified that Mr. Troupis advised him to start drawing legislative districts on the north side of Milwaukee to account for Voting Rights Act considerations. Plaintiffs also stipulate that Mr. Handrick testified about the effect of disparate population growth in Milwaukee and Dane Counties on the development of new legislative districts. Plaintiffs do not stipulate to the truth of the matters asserted.

449. **STATEMENT:** When a district is underpopulated, it needs to expand in size to bring in additional population. *Id*. at 401:8-12. If the districts surrounding the underpopulated district also need to expand in size to bring in additional population, it causes a shift in population and increases the minimum number that each district had to increase. *Id*. at 401:13-402:9. This will cause a ripple or domino effect which will also have an impact on core retention. *Id*.

RESPONSE: Plaintiffs stipulate that an under-populated district needs to bring in additional population in order to achieve population equality among districts. Plaintiffs do not stipulate that the under-populated district will necessarily expand in size, because a shift into a more densely populated area could result in a geographically smaller district. Handrick Depo. (Dkt. 137) at 401:21-25.

450. **STATEMENT:** When trying to compensate for this ripple effect, and by taking Voter Rights Act concerns into account, compactness of districts will be adversely impacted. *Id*. at 404:11-405:7.

RESPONSE: Plaintiffs do not stipulate because the factors cited will not necessarily have an adverse impact on district compactness.

451. **STATEMENT:** Several other redistricting principles could have an impact on the number of delayed voters. *Id*. at 405:8-406:14. For instance, taking communities of interest or compactness into account may change the number of delayed voters. *Id*. at 406:15-25.

RESPONSE: Plaintiffs do not stipulate to paragraph 451 because redistricting principles other than population equality do not justify disenfranchising voters, and because the testimony was solicited by a leading question to which plaintiffs objected. Handrick (Dkt. 137) at 406:15-19.

452. **STATEMENT:** Core retention reports for Assembly District 81 are incomplete in that they don't take into account the fact that Assembly District 81 switched numbers with Assembly District 42. *Id*. at 277:2-10.

RESPONSE: Plaintiffs do not stipulate because renumbering the districts was not required to ensure the contiguity of senate districts, and because plaintiffs consider a more meaningful metric of core retention to be one that measures the largest proportion in the district that was previously together in the preexisting district of the same number. *See* Response to ¶ 401(a).

453. **STATEMENT:** Pursuant to the figures in the 2010 decennial census, Milwaukee County had to lose an Assembly District and Dane County had to add one. *Id*. at 282:6-9. Three Assembly Districts that had historically been inside the boundaries of Milwaukee County were stretched into Waukesha County due to the ripple/domino effect caused by the malapportionment in Milwaukee and Dane County which caused lines to shift between those two counties. *Id*. at 300:22-302:9.

RESPONSE: Plaintiffs do not stipulate that Milwaukee County had to lose an assembly district because its population was sufficient to retain part of an assembly district. Plaintiffs stipulate that changes to one district will affect other districts. However, plaintiffs do not stipulate to the second sentence because the population changes in Milwaukee and Dane Counties could have been accommodated by retaining a larger part of one assembly district within Milwaukee County, rather than by stretching multiple assembly districts into Waukesha County.

454. **STATEMENT:** As one of the map drawers, Joseph Handrick considered population equality, municipal splits, compactness, contiguity, and communities of interest when

drawing the maps. *Id*. at 282:16-22; 322:12-17. He also considered core retention. *Id*. at 285:24-286:6.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified to having considered population equality, municipal splits, compactness, contiguity, and communities of interest. Plaintiffs do not stipulate to the truth of the matters asserted. Plaintiffs do not stipulate that Mr. Handrick considered core retention: "Q: As you drew your Assembly districts, did you consider the core population retention as it pertained to Senate districts? A: No, not that I recall." Handrick Depo. (Dkt. 137) at 285:24-286:2.

455. **STATEMENT:** With respect to communities of interest, Mr. Handrick considered municipalities and tribal boundaries. *Id*. at 287:5-11.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified to having considered municipalities and tribal boundaries with respect to communities of interest. Plaintiffs do not stipulate to the truth of the matters asserted.

456. **STATEMENT:** The City of Racine was too large to be contained in one Assembly District which is why it was split into two Assembly Districts. *Id*. at 289:3-292:7. Mr. Handrick had a conversation with Senator Robert Wirch (Democrat from Kenosha) who mentioned that he felt safe in all future races in his district. *Id*. at 334:7-335:12.

RESPONSE: Plaintiffs stipulate that the population of the City of Racine is greater than the ideal population of an assembly district, and that it therefore could not be contained within a single assembly district. Plaintiffs stipulate that Mr. Handrick testified to having had the conversation described with Senator Wirch, but plaintiffs do not stipulate to the truth of the matter asserted.

457. **STATEMENT:** When splitting the City of Beloit, Mr. Handrick was careful not to split the minority population in that City. *Id*. at 299:7-25.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified as described but do not stipulate to the truth of the matters asserted.

458. **STATEMENT:** The city of Eau Claire, the city of Madison and the cities of Racine and Kenosha are examples of communities of interest that Mr. Handrick put together in the new maps. *Id*. at 412:4-11.

RESPONSE: Plaintiffs do not stipulate to paragraph 458. The City of Racine and the City of Kenosha do not represent a community of interest and were not "reunited" by Act 43 because they have not historically been joined in a single senate district. When asked, "Do you know why parts of Kenosha and Racine were combined into a single Assembly district?" Mr. Handrick responded, "No, I don't." Handrick Depo. (Dkt. 137) at 293:6-13.

459. **STATEMENT:** The overwhelming majority of members of the Oneida Nation live in two townships, in two counties, town of Hobart and the town of Oneida, and a very small portion is in the village of Ashwaubenon. *Id*. at 304:18-22. Just as the federal court did in 2002, the new maps keep those two towns together in one Assembly District. *Id*. at 304:25-305:3. The bulk of the Oneida Nation lives in two counties: Brown and Outagamie. *Id*. at 396:4-7.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified to the facts in paragraph 459. Plaintiffs do not stipulate to the truth of the matters asserted.

460. **STATEMENT:** The Stockbridge-Munsee Nation is separate from the Menominee Nation. The Menominee Nation is indigenous to Wisconsin. *Id*. at 306:13-21. The Stockbridge-Munsee Nation is not; they are of Mohican origin from the state of New York. *Id*. The Stockbridge-Munsee reservation is almost exclusively contained in two townships, the town

of Bartelme and the town of Red Springs. *Id*. The new maps keep the Stockbridge-Munsee reservation in one District. *Id*. at 306:22-307:1.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified to the facts in paragraph 460. Plaintiffs do not stipulate to the truth of the matters asserted.

461. **STATEMENT:** Members of the Stockbridge-Munsee Nation and the Menominee Nation live throughout the State of Wisconsin. *Id*. at 397:7-15. Thus, the members of those two nations have not always been represented by the same Assembly person and Senator. *Id*.

RESPONSE: Plaintiffs stipulate that Mr. Handrick testified to the facts in paragraph 461. Plaintiffs do not stipulate to the truth of the matters asserted.

462. **STATEMENT:** When drawing maps inside Milwaukee County, Mr. Handrick took the African-American minority community into account. *Id*. at 309:20-310:1. The map drawers were given several guidelines to consider when drawing the African-American districts in Milwaukee County, these included the following: (1) the 2002 court-drawn map had five African-American majority districts and that number must not decrease; (2) if the African-American population had grown relative to the total population enough to create a sixth majority African-American district without violating traditional redistricting principles, it would be acceptable to drawn another majority-minority district; and (3) unless dictated by greater forces of population malapportionment, African-American incumbents ideally would not be paired with each other or with a white incumbent. *Id*. at 310:22-311:24. In addition, Mr. Handrick was advised to stay within the ranges for minority voting age population established in the maps drawn by the federal courts in 1992 and 2002. *Id*. at 371:19-372:4.

RESPONSE: Plaintiffs do not stipulate to paragraph 462.

463. **STATEMENT:** A sixth majority African-American district was drawn in Milwaukee. *Id*. at 312:16-19.

RESPONSE: Plaintiffs stipulate that six (6) majority voting age population African-American assembly districts were created under Act 43. *See* Pls.' Tr. Ex. 55 (Mayer Report) at 24-25.

464. **STATEMENT:** When drawing maps inside Milwaukee, Mr. Handrick was given several guidelines to consider when drawing the Latino districts in Milwaukee County, including but not limited to the following: (1) there was a majority Hispanic district in Milwaukee County, and therefore, any new map would, at the very least, have to maintain that district, (2) if population growth of the Hispanic community relative to the total community would permit the creation of a second Hispanic majority district, it would be acceptable to draw another district; and (3) unless dictated by greater forces of population malapportionment, Hispanic incumbents ideally would not be paired with another incumbent. *Id*. at 314:11-315:4. In addition, Mr. Handrick was advised to stay within the ranges for minority voting age population established in the maps drawn by the federal courts in 1992 and 2002. *Id*. at 371:19-372:4.

RESPONSE: Plaintiffs do not stipulate to paragraph 464 because, as evidenced by his testimony, Mr. Handrick had almost no information about the south side of Milwaukee or the Latino community:

> Q. How familiar are you with this area in the city of Milwaukee?
>
> A: Practical terms in terms of where a restaurant is or something like that, I'm not familiar with it. In terms of basic demographics, I'm a little familiar.
>
> Q: Describe your knowledge of the basic demographics.
>
> A:The area south of Interstate 94 and to the west of, I don't know what the river is, there's a rather sizable Hispanic population that resides in that portion of the city.

> Q: And have you ever gone to 16th Street?
>
> A: Is that a restaurant?
>
> …
>
> Q: Are you familiar with 16th Street at all?
>
> A: No.
>
> Q: Are you familiar with where the central—the main business district of the Latino community is?
>
> A: No

Handrick Depo. (Dkt. 137) 373:18-374:16.

465. **STATEMENT:** To address the Latino community, Mr. Handrick drew a larger Senate District and then worked on creating Assembly Districts inside that boundary. *Id*. at 316:25-317:11. Mr. Handrick drew two alternatives for Assembly Districts 8 and 9; they had a HVAP of 57 percent/57 percent and 64 percent/51 percent. *Id*. at 388:5-7. Neither alternative was selected in the final version of Act 43.

RESPONSE: Plaintiffs do not stipulate to paragraph 465.

466. **STATEMENT:** Mr. Handrick spoke with Jesus "Zeus" Rodriguez regarding Assembly Districts 8 and 9. *Id*. at 319:10-14.

RESPONSE: Mr. Handrick testified that he had no contact with the Latino community when he originally drew the maps:

> Q: When you were deciding how to draw Districts 8 and 9 and the map that you drew, did you consult with any members of the Latino community in Milwaukee?
>
> A: No.
>
> Q: Is it fair to say that the first communication or contact that you had with anyone who was a representative of the Latino community was with Mr. Rodriguez…?
>
> A: Yes.

> Q: And was he the only one you ever spoke with who was a member of the Latino community about Districts 8 and 9?
>
> A: Yes.

Id. at 319:5-8.

467. **STATEMENT:** The amendment regarding Assembly Districts 8 and 9 that was adopted caused the final percentages of those districts to increase when compared to the past map, and in particular, the final voting age percentage of District 8 to be higher than the court-drawn percentage in 2002. *Id*. at 408:11-20. The final HVAP for Assembly Districts 8 and 9 was 60.5 percent/54 percent. The democrats voted against raising the Latino voting age population in Assembly District 8 from 57 to 60 percent. *Id*. at 410:15-20.

RESPONSE: Plaintiffs do not stipulate to the testimony by Mr. Handrick because it was solicited by a leading question. Handrick Depo. (Dkt. 137) at 409:6-8, 410:18-19.

468. **STATEMENT:** Mr. Handrick did not consider citizen voting age population for the Latino community when he was drawing the maps for Assembly Districts 8 and 9 because that data is not contained in the 2010 decennial census and he was unaware that such data existed. *Id*. at 334:1-6.

RESPONSE: Mr. Handrick did not consider citizenship when he drew the maps, he testified that he "was not even aware that there was such a thing as citizen voting age population, and I believe, even to this day, I believe it is not census data, but I could be wrong. So I had not even heard that term during this process." *Id.* at 333:21-25.

469. **STATEMENT:** The only data available to the map drawers was from the United States Census – and the 2010 decennial census. *Id*. at 392:9-11. That census data does not include any information on citizenship. *Id*. at 393:21-24. Based on the computer system available to the map drawers, the software that was available to them, and the data that was

available from the census, it was not possible to have drawn maps based on citizen voting age population. *Id*. at 394:21-395:5.

RESPONSE: Plaintiffs do not stipulate to the testimony by Mr. Handrick because it was solicited by leading questions. *Id.* at 392:20-21, 394:4-16, 395:1-3.

470. **STATEMENT:** There is a public website called Dave's Redistricting where anybody in the public may go on to any state and draw redistricting maps. *Id*. at 391:6-10.

RESPONSE: Plaintiffs stipulate to the existence of the Dave's Redistricting website but do not stipulate to its efficacy or reliability as a tool for drawing redistricting maps. Unlike during previous redistricting cycles, the public was denied access to redistricting software during the 2011 redistricting process. White Depo. (Dkt. 145) at 35:9-36:1; Baldus Pls.' Statements of Contested Facts (Dkt. 158) ¶ 265.

471. **STATEMENT:** Prior to Act 43, the urban and rural areas of Racine were paired in one Senate district (District 21), as were the urban and rural areas of Kenosha in another Senate district (District 22). Act 43 pairs the two urban areas of Racine and Kenosha counties in one Senate district (District 21), and the more rural parts of each county together in another Senate district (District 22).

RESPONSE: Plaintiffs stipulate to paragraph 471.

472. **STATEMENT:** The Legislature was presented with the option of keeping the urban areas of Racine and Kenosha Counties in one district and the rural parts of Racine and Kenosha Counties in another district. The Legislature chose to keep the urban areas together and the rural parts together. *Id*. at 448:25-449:22.

RESPONSE: Plaintiffs do not stipulate to paragraph 472 because the bill that became Act 43 did not provide the legislature with more than one option for the configuration of Racine

and Kenosha Counties. Although defendants cite to the deposition of Mr. Handrick, the referenced testimony appears in the deposition of Tad Ottman. Ottman Depo. (Dkt. 141) at 448:25-449:22.

473. **STATEMENT:** This results in two districts which now each share more in common –urban with urban, rural with rural—throughout each Senate district. Id. at 350:19-351:4, and Exhibit 121.

RESPONSE: Plaintiffs do not stipulate to paragraph 473. The City of Kenosha and the City of Racine do not represent a community of interest. *See* Barca Depo. (Dkt. 152) at 19:5-15.

474. **STATEMENT:** A significant portion of the "delayed voting" relates to the Racine/Kenosha area. This results from the Legislative decision to combine urban areas from Racine and Kenosha Counties into one Senate District, and the rural areas of those Counties in a different Senate District. *Id*. at 449:7-450:12.

RESPONSE: Plaintiffs stipulate that the decision to reconfigure Senate District 21 and 22 by combining the City of Kenosha and the City of Racine into one district resulted in the disenfranchisement of 72,431 voters who were shifted into the 21st senate district from the 22nd senate district. Pls.' Proposed Findings of Fact (Dkt. 158) ("Pls.' FOF") at ¶ 287. The last regular election in which residents of the 22nd district voted for a state senator was in 2008; the next regular senate election in the 21st district will take place in 2014. *Id.*

475. **STATEMENT:** During the development of the maps, the effects of the map on "delayed voting" were considered. When the initial "delayed voting" numbers were calculated, the Legislature made some changes to the map in order to reduce the number of persons who would be delayed. *Id*. at 450:3-451:9.

RESPONSE: Plaintiffs stipulate that Mr. Ottman testified that, in early draft maps, some voters were moved from one district to another to reduce the number of persons who would have delayed voting. Plaintiffs do not stipulate to the truth of the matter asserted. Those who drew the Act 43 maps did not minimize disenfranchisement. Rather, they treated a 5.25 percent disenfranchisement rate as "a benchmark" to emulate because, in their view, that was an "acceptable level of delay in voting." Foltz Depo. (Dkt. 138) at 185:4-196:1, 187:20-188:1.

H. Congressional Districts.

1. Population movement.

476. **STATEMENT:** In 2002, Iowa adopted a new congressional district map in which 1,226,004 people were assigned to a new district. Based on 2000 census data, Iowa needed to "move" only 181,419 people to achieve equal population in each congressional district. Rebuttal Report of Ronald Gaddie ("Gaddie Rebuttal") at 9, Table 1.

RESPONSE: Plaintiffs do not stipulate to paragraph 476 because the congressional district map adopted in Iowa in 2002 is not relevant to any claim or defense in this litigation.

2. Communities of interest.

477. **STATEMENT:** The Northwoods region of Wisconsin includes over 3200 lakes, streams, and rivers, and over a half million acres of public forest for recreational use. These shared features are an important part of tourism, the economy, and culture in the region. (http://www.northwoodswisconsin.com/area.htm. *See also* http://www.fs.usda.gov/main/cnnf/about-forest/about-area.)

RESPONSE: Plaintiffs stipulate only that facts in paragraph 477 appear at the cited websites. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

478. **STATEMENT:** Chequamegon-Nicolet National Forest includes lands located in counties including Bayfield County to the northwest and Florence County to the northeast.

http://www.fs.usda.gov/cnnf (follow link to “Where is the Chequamegon-Nicolet National Forest?”)

RESPONSE: Plaintiffs stipulate only that facts in paragraph 478 appear at the cited website. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

479. **STATEMENT:** High schools from Rhinelander, Tomahawk, Minocqua (Lakeland Union), Eagle River (Northland Pines), Antigo, Mosinee, and Medford comprise the entire membership of the Great Northern Conference. These schools are located in Taylor, Lincoln, Marathon, Vilas (now in the 7th), and Oneida Counties (including both sides of the previous congressional-district boundary through Oneida). (http://www.greatnorthernconference.org/g5-bin/client.cgi?G5button=7)

RESPONSE: Plaintiffs stipulate only that facts in paragraph 479 appear at the cited website. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

480. **STATEMENT:** Nicolet Area Technical College has campuses in both Minocqua (Nicolet-Lakeland) and Rhinelander.
http://www.nicoletcollege.edu/community/findpeopleplaces/ campusmaps/index.html

RESPONSE: Plaintiffs stipulate only that facts in paragraph 480 appear at the cited website. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

481. **STATEMENT:** Nicolet Area Technical College’s mission statement is, “In service to the people of Northern Wisconsin, we deliver superior community college education that transforms lives, enriches communities, fosters economic development, and expands employment opportunities.”
http://www.nicoletcollege.edu/currentstudents/aboutnicolet/mission/index.html

RESPONSE: Plaintiffs stipulate only that facts in paragraph 481 appear at the cited website. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

482. **STATEMENT:** NorthwoodsWisconsin.com serves the Northwoods region, including municipalities such as Manitowish Waters, Boulder Junction, Lac du Flambeau, Minocqua, Rhinelander, and Eagle River. NorthwoodsWisconsin.com.

RESPONSE: Plaintiffs stipulate only that facts in paragraph 482 appear at the cited website. Plaintiffs do not stipulate to the truth or relevance of the matters asserted.

3. Core retention.

483. **STATEMENT:** The congressional districts created by Act 44 maintain an average core of 84.33 percent, as reflected in **Table 26**.

RESPONSE: Plaintiffs do not dispute the accuracy of Table 26. However, Table 26 paints an incomplete picture, as demonstrated by Professor Erik Nordheim during his deposition of January 26, 2012. Discussion of core retention without reference to underlying facts and assumptions is incomplete and potentially misleading. Nordheim Depo. (Dkt. 151) at 58:3-59:22. Furthermore, comparison based strictly on the total average core retained statewide is potentially misleading when, for example, the Third, Seventh and Fifth Congressional Districts have core retention rates of 75.91, 75.81 and 74.99, respectively. *See* Table 26.

4. Compactness.

484. **STATEMENT:** Compactness scores for both Act 44 Congressional Districts and the 2002 districts appear in **Table 27**.

RESPONSE: Plaintiffs do not dispute the accuracy of Table 27. However, Table 27 paint an incomplete picture, as demonstrated by Professor Erik Nordheim during his deposition of January 26, 2012. First, the information produced by Professor Gaddie relies on an

assumption that the individual entities, the compactness scores for each district, when they are clearly not, as one cannot adjust one district without affecting the others. Nordheim Depo. (Dkt. 151) 60:4-61:2. Second, to the extent that Table 27 is used to present a correlation in the compactness of districts before and after Act 44, Professor Nordheim stated that such correlation is immaterial, as it is more reflective of constant features of geography. *Id.* at 61:17-62:9. Finally, the numbers produced by Professor Gaddie are immaterial as they are unresponsive to Professor Nordheim's assertions regarding, in particular, changes in compactness in Congressional District Three. *Id.* at 62:10-63:23.

I. Partisan Issues.

1. Participation in redistricting process.

485. **STATEMENT:** Mr. Joel Gratz worked for the Senate Democratic Caucus in 2000-2002. Gratz Depo. (Dkt. 146) at 22:7-9; 23:9-10. During that time, he drew the legislative boundary map that was ultimately passed by the Democratic State Senate. *Id.* at 23:13-16. The Senate and Assembly in 2000-2002 could not agree on maps, so there was federal litigation. *Id.* at 23:16-19.

RESPONSE: Plaintiffs do not stipulate to paragraph 485 because the facts are not relevant to any issue in this litigation.

486. **STATEMENT:** Mr. Gratz gave a presentation on redistricting and Acts 43 and 44 to the Wisconsin Association of Lobbyists in Spring, Green, Wisconsin on August 2011. *Id.* at 32:21-24. At that meeting, Gratz advised the audience that it was going to be a more difficult year for Democrats to be elected under the new maps, but that the maps did not leave Democrats without opportunities for election. *Id.* at 66:2-7. He also mentioned that there were some districts—in Green Bay and Eau Claire—which were now tremendously or much more Democratic. *Id.* at 66:8-15.

RESPONSE: Plaintiffs do not stipulate because the facts in paragraph 486 are not relevant to any issue in this litigation.

487. **STATEMENT:** There were other maps created by the Democrats or related entities following the introduction of the maps in Acts 43 and 44; to wit, there was a map started by Mr. Gratz in mid-July, 2011 which he drew after discussions with democrats "so that if they chose to introduce a map into the legislature as an alternative, one was available. *Id.* at 15:23-16:2. In addition, the Wisconsin Democracy Campaign posted a map on their website (*Id.* at 95:20-23.) and Representative Fred Kessler drew a map. *Id.* at 82:18-21.

RESPONSE: Plaintiffs do not stipulate because the facts in paragraph 487 are not relevant to any issue in this litigation.

488. **STATEMENT:** There was no impediment or ban preventing the Democratic legislators from introducing one of the maps described above in response or as an amendment to Acts 43 and 44. Gratz Depo. (Dkt. 146) at 28:13-15.

RESPONSE: Plaintiffs do not stipulate to paragraph 488 because it misstates the testimony of Mr. Gratz. Mr. Gratz testified that he did not know if there was any ban or impediment to introducing a map. *Id.* at 28:2-15. Plaintiffs do not stipulate because the facts in paragraph 488 are not relevant to any issue in this litigation.

489. **STATEMENT:** While still employed as a consultant to the Democrats, Mr. Gratz drafted a Memorandum to then-Speaker Michael Sheridan regarding the possibility of using census blocks to have the democrats draw legislative and congressional maps. *Id.* at 85:22-86:1 (referencing Exhibit 1031). The conclusion of that Memorandum mentioned a potential consideration to obtain the census data early while the Democrats were still in control of the Legislature and democrat Governor James Doyle was still in office and to draw maps and

pass them in the first three days of January 2011—at the very end of the Democratic lame duck session. *Id*. at 88:24-90:16. This would have left practically no time for public hearings.

RESPONSE: Plaintiffs do not stipulate to paragraph 489 because it misstates the testimony of Mr. Gratz. Mr. Gratz stated that the point of the draft memorandum was to analyze a "draft of a potential bill," now 2011 Wisconsin Act 39, that "made some changes to the current law that would allow census blocks to be used instead of ward boundaries for legislative and congressional maps." *Id.* at 86:12-86:19. Mr. Gratz also testified that in the memorandum he "discussed the impact [of the bill] on the timeline of when [redistricting] work could be done." *Id.* at 87:20-88:18, 89:8-18. Plaintiffs also do not stipulate to paragraph 489 because the facts are not relevant to any issue in this litigation.

490. **STATEMENT:** The Shop Consulting, Inc., was retained by the Senate Democrats in 2009 pursuant to a retainer agreement by which the Shop Consulting was to provide redistricting services. White Depo. (Dkt. 145) at 32:16-33:22.

RESPONSE: Plaintiffs do not stipulate to paragraph 490 because the facts are not relevant to any issue in this litigation. Paragraph 490 also misstates the testimony of Mr. White. Mr. White stated that he did not know if he represented senate assembly Democrats, but that he was retained by the law firm of O'Neil, Cannon, Hollman & DeJong. *Id.* at 31:16-33:11.

491. **STATEMENT:** Upon a request from Senator Mark Miller's office, The Shop Consulting assisted in drawing a legislative redistricting map following the 2010 decennial census. *Id*. at 16:24-17:10. The map was drawn on terminals located in the State Capitol. *Id.* at 18:20-19:4.

RESPONSE: Plaintiffs do not stipulate to paragraph 491 because the facts are not relevant to any issue in this litigation.

492. **STATEMENT:** Previously, The Shop Consulting had been retained by the Senate Democrats in 2001-2002 to assist in drafting a legislative redistricting plan. *Id*. at 26:21-27:12.

RESPONSE: Plaintiffs do not stipulate to paragraph 492 because the facts are not relevant to any issue in this litigation.

493. **STATEMENT:** Autobound is a software program used to draw legislative maps. It was used to draw 19 maps that eventually became Acts 43 and 44. The software was provided to the majority and minority caucuses in the Senate and Assembly. The Assembly Democratic Caucus and the Senate 21 Democratic Caucus had the program available for use on a computer, as of approximately December 2010. Training on the use of Autobound was available through the Legislative Technology Services Bureau. There is no known work product indicating that either the Assembly Democratic Caucus or the Senate Democratic Caucus took the opportunity to use Autobound during the redistricting process. Ottman Depo. (Dkt. 141) at 439:11-442:7.

RESPONSE: Plaintiffs stipulate only that Autobound is a software program used to draw legislative maps and that computer terminals with Autobound were made available by the Legislative Technology Services Bureau, which offered training sessions.

494. **STATEMENT:** Following the introduction of the bills which became Acts 43 and 44, there were numerous editorials written on the proposed redistricting maps and their impact on various communities, cities and counties. Barca Depo. at 21:19-22.

RESPONSE: Plaintiffs stipulate to paragraph 494.

495. **STATEMENT:** There was at least one amendment passed with respect to Act 43. *Id*. at 22:4-6.

RESPONSE: Representative Barca testified as follows: "I don't know if there were any changes, I guess there was one amendment adopted, but that was not taken into account in the final product." Barca Depo. (Dkt. 152) at 22:3-7.

496. **STATEMENT:** Despite the republicans having majorities in both the Senate and Assembly, the democrats did continue to submit amendments to proposed legislation. *Id.* at 43:1-44:5.

RESPONSE: Representative Barca testified as follows: "[I]t was pretty clear by July [2011] that Republicans would never entertain any amendments or any input the Democrats had to provide . . . . Up until that point, I don't know we might have had 400 amendments roughly and they rejected every single one except for one. . . ." His testimony continued:

> Q: To what 400 amendments are you referring?
> A: I'm just saying throughout the process, from January through June, virtually every bill that came forward, Democrats did not want to seem like obstructionists, so we typically would bring forward amendments as alternatives to modify the various bills that the Republicans had offered, whether it was health savings accounts or tax credits for business, or, you know, drinking laws or gun laws or whatever it might be, and you know, the practice of the Republicans had followed had been to reject every single amendment by Democrats in almost every case just by a complete, you know, every Republican voting to table it.
> Q: At what point did the Democratic caucus decide that it no longer wished to submit amendments in the legislative process?
> A: Well, we continued to submit amendments despite the fact that we, you know, know that they won't be adopted whenever we think we have enough time to put together something meaningful that we can make some sense.

Barca Depo. (Dkt. 152) at 42:20-43.

497. **STATEMENT:** At least some democratic legislators were aware of an alternative Wisconsin legislative redistricting map, drawn by Wisconsin Democracy Campaign, after the introduction of redistricting legislation and prior to the passage of Acts 43 and 44. *Id.* at 40:3-22; 42:3-5. The democratic caucus was in communication with the Wisconsin

Democracy Campaign regarding its alternative maps prior to the enactment of Acts 43 and 44. *Id*. at 47:16-48:3. But they did not introduce the maps. *Id*. at 124:5-9.

RESPONSE: Representative Barca did not testify to having firsthand knowledge of communications between members of the Democratic caucus and the Wisconsin Democracy Campaign regarding its alternative maps. He testified: "I'm sure that there are a couple members of our caucus, a number of the members of our caucus that talk probably more regularly with those groups, but I don't recall specifically . . . . I'm sure if you depose every member of the legislature, you probably would find a couple people that actually talked with them, you know, in some detail." Barca Depo (Dkt. 152) at 47:16-48:3. He explained further, "I'm sure people have talked with them. There is no doubt in my mind about that, but in what detail, I don't know." *Id.* at 48:8-11. Representative Barca testified that the Democratic caucus did not introduce the Wisconsin Democracy Campaign map to the legislature because the Democrats had neither the time nor the resources to assess the map:

> A: [G]iven the timeline from when they released the map until we were ready to adopt it, we didn't really have the time to put together our own map, nor did we have the resources to thoroughly analyze this type of map to know if it would be appreciably better from all of the various constitutional standards that you have to look at.
> Q: Do you know if Wisconsin Democracy Campaign might have known about the constitutional standards?
> A: I trust they made their best effort to try and address those initiatives, but we would have by no means to independently analyze that.
>
> Barca Depo. (Dkt. 152) at 124:9-21.

498. **STATEMENT:** The Legislative Technology Services Bureau set up computer terminals for the Senate and Assembly democrats at the State Capitol in April or May, 2011. *Id*. at 132:1-18. They contained the map-drawing program, AutoBound. Gratz Depo. at 12:17-22.

Representative Fred Kessler was capable of drawing redistricting maps on these terminals. Barca Depo. at 133:2-13.

RESPONSE: Plaintiffs stipulate that the Legislative Technology Services Bureau set up a computer terminal that Representative Barca decided would be placed in Representative Fred Kessler's office. As to Representative Kessler's ability to draw redistricting maps, Representative Barca testified:

> A: I know Fr[ed] Kessler is the most knowledgeable with these kinds of things. He's drawn maps over I think 20 or, probably 30-year period, back into the '60s. He does this for fun, much like we go and work out. So he's -- you know, I think he was drawing maps three years ago, so you know, he would be the one that would be most adept at using this. But in terms of drawing a map, we never really asked him to draw any specific map or said, look, we're going to substitute a map that we're going to present, just because we didn't think we had the wherewithal to do that.
> * * *
> Q: Did anyone in the Assembly Democratic caucus think to ask him, perhaps he might think about drawing a map for the Assembly Democrats?
> A: Well, the concern with asking him to draw an official map for the Assembly Democrats is just we didn't have the resources by which to analyze the information thoroughly, and so the problem was that we never thought a map would be actually seriously considered, but even if we could have, you know, as I indicated previously, we didn't have the legal resources. We didn't have the consultants to be able to look at this, and so it would have been very difficult to get our caucus to ever buy into a map without that kind of expertise available to us.
> Q: Well, you mentioned that Mr. Kessler draws maps for fun.
> A: Um-hum.
> Q: Presumably he has some facility to do it?
> A: He does have some facility. The concern is that people always want -- similar to the way I expressed with the Wisconsin Democracy Campaign, people like to have expert information in front of them. People's trust level is not always real high with any one individual member of the caucus or any one outside group, so you know without having sort of that independent assessment to be able to process the information, it would be very difficult to get by all our caucus members.
>
> Barca Depo. (Dkt. 152) at 133:2-134:25.

499. **STATEMENT:** Between January 5, 2011 and July, 2011, the democrat assembly caucus spoke with republican leadership about redistricting expenditures a few times, wrote a letter of concern about such expenditures and spoke with Legislative Counsel regarding whether they could provide legal assistance on redistricting. *Id*. at 61:17-62:14. They did not take any legislative steps in that time frame regarding redistricting. *Id*. at 63:23-65:14.

RESPONSE: Plaintiffs do not stipulate to paragraph 499 because it is not a comprehensive account of the Democratic caucus's response to the legislative leadership's denial of any funding or resources for redistricting purposes. *See* Barca Depo. (Dkt. 152) at 61:17-66:1.

500. **STATEMENT:** The democrat legislators did not take any procedural steps to slow down the legislative process of considering and enacting Acts 43 and 44. *Id*. at 112:6-18. In particular, they did not engage in a filibuster, although they could have if they had wanted. *Id*. at 116:20-117:14.

RESPONSE: Representative Barca testified that the longest filibuster in Assembly history was 61 hours, and that had they tried something similar with respect to the redistricting legislation, "three days later it still would have passed." Barca Depo. (Dkt. 152) at 116:15-117:19.

501. **STATEMENT:** The democrat assembly caucus and democrat leadership did not consult with any redistricting experts between January, 2011 and July, 2011. *Id*. at 71:11-72:6. After the redistricting legislation was introduced in July, 2011, neither the Senate nor the Assembly democrat caucus held any informational hearings or town meetings on redistricting. *Id*. at 76:2-6; 77:2-16.

RESPONSE: The Democratic leadership did not consult with redistricting experts because the Republican majority denied the Democratic minority any funding for redistricting

purposes. Barca Depo. (Dkt. 152) at 13:12-14:13. It would have been infeasible for the Democratic leadership to organize informational hearings or town meetings on redistricting within the 12-day window between when the redistricting legislation was made public and passed by the legislature. *Id.* at 76:2-78:7. Furthermore, the Democratic leadership was unaware that the redistricting legislation would be introduced in July 2011, months before redistricting legislation was traditionally introduced in Wisconsin. *Id.* at 57:2-16.

502. **STATEMENT:** Representative Peter Barca admits that it was important that the Legislature adopt a redistricting map in time for the 2012 elections. *Id*. at 80:16-18. He agreed that there was some dispatch needed in adopting such a map, and that if the Legislature did not act the Courts would have to. *Id*. at 81:15-17.

RESPONSE: In agreeing that it was important that the legislature adopt a map in time to conduct elections in 2012, Representative Barca stated that he would have expected the process to commence "shortly after all the counties and municipalities had finalized their maps and that . . . . in all likelihood probably late fall or first thing in January [2012] that map might have passed." Barca Depo. (Dkt. 152) at 80:16-81:2. According to the timeline proposed by Representative Barca, the legislature passed the redistricting legislation four to six months earlier than necessary.

503. **STATEMENT:** All of the democrats in the 2011 legislature signed on as authors of Substitute Amendment 1 to Senate Bill 149, dated July 20, 2011. *Id*. at 88:16-22; 98:7-99:10; see also Exhibit 1039. Substitute Amendment 1 would shift redistricting duties to the unelected Government Accountability Board, with assistance from the Legislative Reference Bureau. The redistricting maps would be presented to the legislature which would have to vote on them within 7 days. No substantive amendments would be allowed. If the maps were not passed, the

GAB would re-draw and resubmit them under the same time and procedure rules. If the maps were not acceptable after a third attempt, there were no provisions for further maps. *Id.* at 91:17-98:6; see also Exhibit 1039.

RESPONSE: Representative Barca testified as follows regarding Substitute Amendment 1 to Senate Bill 149: "[I]f we were going to seriously consider this document, when I read this, personally I would try to amend this to modify it, I wouldn't actually agree with that exactly as it's written. . . . I agree with the concept of starting with the document that is drawn in a non-partisan fashion, but had this come for a vote[], as oftentimes the case, you agree in concept with moving forward with an idea, but that doesn't mean that you necessarily wouldn't amend it. I would definitely have offered an amendment had this come up and been considered by the legislature. I would definitely want to allow time for public input for the amendment process." Barca Depo. (Dkt. 152) at 95:21-96:15.

2. 1983 Legislative Redistricting.

504. **STATEMENT:** Democratic legislators introduced the 1983 Legislative maps as Assembly Bill 1 on July 11, 1983 ("the bill"). A single public hearing was held that same day. The Assembly passed the bill on July 13, the Senate did so on July 14, and the Governor signed it into law on July 15.

RESPONSE: Plaintiffs do not stipulate to paragraph 504 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

505. **STATEMENT:** On July 11, 1983, Assembly Bill 1 was introduced by the Committee on Assembly Organization. It was read for the first time and referred to the Committee on Elections the same day.

RESPONSE: Plaintiffs do not stipulate to paragraph 505 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

506. **STATEMENT:** On July 11, 1983 – the same day it was introduced—the first and only public hearing also was held.

RESPONSE: Plaintiffs do not stipulate to paragraph 506 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

507. **STATEMENT:** On July 12, 1983, the Committee on Elections recommended its passage, by a vote of 7 to 3.

RESPONSE: Plaintiffs do not stipulate to paragraph 507 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

508. **STATEMENT:** On July 13, 1983, it was read a second time.

RESPONSE: Plaintiffs do not stipulate to paragraph 508 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

509. **STATEMENT:** On July 13, 1983, the rules were suspended; it was read a third time; it passed the Assembly by a vote of 51 to 44; and it was ordered immediately messaged to the Senate.

RESPONSE: Plaintiffs do not stipulate to paragraph 509 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

510. **STATEMENT:** Twelve amendments were offered to the bill in the Assembly; 3 further amendments would be offered in the Senate.

RESPONSE: Plaintiffs do not stipulate to paragraph 510 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

511. **STATEMENT:** On July 14, 1983, it was read the first time in the Senate, and referred to the Committee on Urban Affairs and Government Operations. The Committee recommended passage by a 3 to 2 vote.

RESPONSE: Plaintiffs do not stipulate to paragraph 511 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

512. **STATEMENT:** On July 14, 1983, the rules were suspended and it was read a second time and a third time. The same day, the Senate passed the bill and ordered it immediately messaged.

RESPONSE: Plaintiffs do not stipulate to paragraph 512 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

513. **STATEMENT:** On July 15, 1983, the Governor signed it. It was published as 1983 Wisconsin Act 29 on July 19, 1983.

RESPONSE: Plaintiffs do not stipulate to paragraph 513 because defendants have cited no sources and the 1983 legislative redistricting process is not relevant to any claim or defense in this litigation.

514. **STATEMENT:** The Governor vetoed an earlier plan that was inserted into the state budget bill by the Democratic caucus—without public hearing—four weeks prior. *Id.*, ¶ 3, Ex. B. The Assembly Democrats circulated an email with talking (Deposition Exhibit 1053) on July 1, 2011, before the redistricting maps were introduced to the Legislature. Barca Depo. II, at 173-174. One of the talking points was that the Democrats' "message is the process and the map is unconstitutional, political and partisan. It is not in the best interest of residents." *Id.* at 176. Representative Barca admits the Assembly Democrats had not seen the redistricting map at that time, but had hear rumors the maps would be extremely partisan and not constitutional. *Id.* at 176-177. These talking points were based on the rumor grapevine and speculation. *Id.*, 178-179.

RESPONSE: Representative Barca acknowledged that the talking points circulated before the introduction of the legislation were based in part on "speculation," and elaborated as follows: "Well, you wouldn't know for sure any of these things, obviously, all you would do is speculate, but based on what we were hearing, we believed that that would happen, and we must have thought at this point that we were getting close to when they were going to drop this map. So the information we were getting from people was that they were coming out with this map that was going to be extremely partisan and unconstitutional, and would hurt Hispanics and hurt other community of interest." Barca Depo. (Dkt. 153) at 179:3-13.

515. **STATEMENT:** Another bullet point was that that the pending Democrat caucus meeting was to be kept confidential. *Id.* at 183. This was standard operating procedure. *Id.* Caucuses for both parties typically met in closed sessions not open to the public. *Id.* at 187-188.

RESPONSE: Representative Barca testified as follows: "Virtually all the times when the caucuses meet, both the democratic and the republican caucuses, they virtually always have

closed caucuses for part of that period, in the democratic and republican caucus." Barca Depo. (Dkt. 153) at 188:11-15.

516. **STATEMENT:** Another bullet point was to make sure that there was not discussion of what the Democrats might do, especially not to the press. *Id.* at 187, 188-189). The next bullet point asserted that the Democrats would not be passing a map and that everything they do "is about positioning both from a message and legal perspective." *Id.* at 190. The next bullet point indicated that they should "stick to the bigger picture message – the GOP map is unconstitutional, divisive, and a blatant attempt to reduce accountability and secure political advantage for republicans." *Id.* at 195-196. All of these decisions and talking points were made before the Democrats had even seen a redistricting map. *Id.* at 196.

RESPONSE: Representative Barca testified as follows:

> Q: You still hadn't seen a map by that point, right?
> A: No. My sense of that, though, is that it was around that time period that we had picked up the sense that they would be introducing a map very soon and that they would pass it with very little input and as quickly as they possibly could before the recall elections could take place so that they could ensure that if they lost the majority, they could still have had this map, which benefited their party.

Barca Depo. (Dkt. 153) at 195:20-196:4.

517. **STATEMENT:** The Assembly Democrat Caucus had decided on July 1, 2011, prior to the introduction of any redistricting map, that they would not be offering any alternative maps. *Id*. 190-191.

RESPONSE: Representative Barca testified as follows:

> Q: So apparently the decision had been made by July 1st, 2011, that the Assembly Democratic Caucus would not be offering a map?
> A: Uh-huh.
> Q: Is that right?
> A: I would guess that we pretty much had decided on that by that point.

Barca Depo. (Dkt. 153) at 190:11-16.

518. **STATEMENT:** At least one Democrat assemblyman contacted LRB because he was considering drafting an amendment to the redistricting map legislation. *Id.* at 198-99. No amendments were ever offered.

RESPONSE: Representative Barca testified as follows: "I don't know the specific details of them, but I know that Representative Staskunas had looked at whether or not he could redraw his specific district. And so he had talked to somebody I believe in LRB, and they were analyzing whether or not they felt they could bring forward a credible amendment, and whether or not he might be able to get some support by the republicans to change his district specifically or, you know, the area around his district." Barca Depo. (Dkt. 153) at 198:25-199:9.

II. PLAINTIFFS' RESPONSES TO GAB DEFENDANTS' PROPOSED CONCLUSIONS OF LAW

A. Count I: "Legislative Boundaries Unconstitutionally Sacrifice Redistricting Principles"

592. **STATEMENT:** Population deviation amongst the new Assembly or Senate Districts created by 2011 Wisconsin Act 43 is a close approximation to exactness when considering the need to respect boundaries of local political units.

RESPONSE: The legislative districts do not respect boundaries of local political units, and the population deviations are not justified by "legitimate considerations incident to the effectuation of a rational state policy," *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). Act 43 therefore violates the equal protection clause.

593. **STATEMENT:** Plaintiffs did not demonstrate any population deviation capable of reduction amongst the new Congressional Districts created by 2011 Wisconsin Act 44.

RESPONSE: Count I pertains only to the legislative districts of Act 43. Paragraph 593 references the congressional districts in Act 44, which are immaterial to Count I.

B. Count II: "The Legislation Does Not Recognize Local Government Boundaries"

594. **STATEMENT:** The Baldus Plaintiffs' second cause of action, "The Legislation Does Not Recognize Local Government Boundaries" fails to state a cause of action upon which relief might be granted.

RESPONSE: Count II is pled both as a violation of the equal protection clause and as a violation of the Wisconsin Constitution. *See* Joint Pretrial Report (Dkt. 158) ¶¶ 1-6. The Wisconsin Constitution requires that legislative districts "be bounded by county, precinct, town or ward lines . . . and be in as compact form as practicable." Wis. Const. art. IV, § 4. Act 43

violates these requirements because it creates legislative districts that are not "bounded by county, precinct, town or ward lines."

C. Count III: "The Legislative Districts Unnecessarily Disenfranchise 300,000 Wisconsin Citizens"

595. **STATEMENT:** Plaintiffs pled this claim solely as a violation of the Wisconsin Constitution.

RESPONSE: Count III is pled as a violation of the equal protection clause. *See* Joint Pretrial Report (Dkt. 158) ¶¶ 7-13; Second Amended Complaint (Dkt. 48) ¶¶ 47-48.

596. **STATEMENT:** This Court does not have jurisdiction to compel state agents to comply with the Wisconsin Constitution.

RESPONSE: As Count III is pled as a violation of the equal protection clause, the jurisdictional argument in paragraph 596 is unfounded.

597. **STATEMENT:** There is no claim under the Wisconsin Constitution for delayed voting consequent to new redistricting legislation.

RESPONSE: Plaintiffs do not plead a claim "under the Wisconsin Constitution for delayed voting." Plaintiffs plead a claim under the equal protection clause for disenfranchisement. *See* Order Denying Defendants' Motion to Dismiss (Dkt. 25) at 6-8. State senators "shall be chosen alternately from the odd and even-numbered districts for the term of 4 years." Wis. Const. art. IV, § 5. The movement of voters from an even-numbered senate district, in which the last regular election was held in 2008, to an odd-numbered senate district, in which the next regular election is to be held in 2014, unnecessarily deprives those voters of the constitutional right to vote in a regular election for two additional years.

598. **STATEMENT:** There is no claim under the United States Constitution for delayed voting consequent to new redistricting legislation.

RESPONSE: The Equal Protection Clause "requires that a State make an honest and good faith effort" to avoid vote dilution. *Reynolds v. Sims*, 377 U.S. at 577. A vote is diluted when, gratuitously, the delay between regular elections in which a citizen can vote is increased through redistricting. *See also* Order Denying Defendants' Motion to Dismiss (Dkt. 25) at 6-8.

D. Count IV: "Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest."

599. **STATEMENT:** The Baldus Plaintiffs' fourth cause of action, "Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest" fails to state a cause of action upon which relief might be granted.

RESPONSE: Count IV states a cause of action upon which relief can be granted. *See* Joint Pretrial Report (Dkt. 158) ¶¶ 14-17, 519-531.

E. Count V: "Congressional and Legislative Districts Constitute Unconstitutional Gerrymandering."

600. **STATEMENT:** The Baldus Plaintiffs have failed to articulate a judicially discernible and manageable standard for adjudicating political gerrymandering claims, and so their claim for political gerrymandering is nonjusticiable.

RESPONSE: Plaintiffs have articulated a judicially discernible and manageable standard for adjudicating political gerrymandering claims. *See* Pls.' Response to Motion for Judgment on the Pleadings (Dkt. 105) at 16-19; Joint Pretrial Report (Dkt. 158) ¶¶ 18-20.

F. Count VI: "Legislative Districts Violate the Federal Voting Rights Act."

601. **STATEMENT:** Act 43 did not violate section two of the Voting Rights Act because, with respect to Wisconsin's African American community, the Baldus plaintiffs failed to satisfy the threshold requirement described in *Thornburg v. Gingles*.

RESPONSE: Either by intent or effect, Act 43 packs the African-American voting age population in the City of Milwaukee into six (6) Assembly Districts, a smaller number of

districts than is necessary, with unnecessarily high concentrations to minimize their voting power in neighboring districts. *See* Pls.' FOF (Dkt. 158) ¶¶ 332-341, 547, 552, 554, 556; *see also Voinovich v. Quilter*, 507 U.S. 146, 158 (1993). If the percentage of African-American voting age population is reduced in each of these districts, thousands more African-American voters would be available for other districts, while still retaining effective majorities in the existing majority-minority districts and enhancing the influence of African-Americans in other districts. *See* Pls.' FOF ¶¶ 338, 341.

602. **STATEMENT:** Act 43 did not violate section two of the Voting Rights Act because, with respect to Wisconsin's Hispanic community, the Baldus plaintiffs failed to satisfy the threshold requirement described in *Thornburg v. Gingles*.

RESPONSE: Plaintiffs have met all of the threshold requirements set forth in *Thornburg v. Gingles*. Based on the totality of the circumstances, Latinos have been denied an equal opportunity to participate in the political process and elect legislators of their choice because Act 43 dilutes the voting power of Latinos by reducing their concentration in the newly drawn Assembly District 8, especially as compared with Assembly District 8 created by the 2002 judicially-imposed plan. *See, e.g.*, Pls.' FOF ¶¶ 295-331, 545, 546, 549, 552, 553, 555; *see also Thornburg v. Gingles*, 478 U.S. 30, 48-51 (1986); *see also Growe v. Emison*, 507 U.S. 25, 401-41 (1993).

G. Count VII: "Legislative Districts Unconstitutionally Use Race as a Predominant Factor."

603. **STATEMENT:** Plaintiffs have failed to demonstrate either through circumstantial evidence of any particular districts shape or demographics, or direct evidence of legislative intent, that race was the predominant motivating factor in placing a significant number of voters within or without particular voting districts.

RESPONSE: Act 43 violates the Equal Protection Clause because, absent a race-neutral explanation, race was the predominant factor motivating the legislature's decision to place a significant number of African-American and Latino voters within or without particular districts. *See, e.g.*, Pls.' FOF ¶¶ 340-341, 557-563; *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995).

H. Count VIII: "New Congressional and Legislative Districts Are Not Justified By Any Legitimate State Interest."

604. **STATEMENT:** The Baldus Plaintiffs' eighth cause of action, "Congressional Districts Are Not Compact and Fail to Preserve Communities of Interest" fails to state a cause of action upon which relief might be granted.

RESPONSE: Count VIII states a cause of action under the equal protection clause. *See* Joint Pretrial Report (Dkt. 158) ¶¶ 102.

I. Count IX: "Any Special or Recall Elections Cannot Be Conducted Under Act 43."

605. **STATEMENT:** This court does not have subject matter jurisdiction over this claim because, based on defendants' representation that they do not intend to conduct the recall elections within the legislative districts created by Act 43, there is no case or controversy.

RESPONSE: A case or controversy exists as to constitutionality of conducting recall elections under the 2002 boundaries. *See* Pls.' FOF (Dkt. 158) ¶ 294. Defendants have waived their jurisdictional arguments.

606. **STATEMENT:** This court also does not have jurisdiction over this claim because it seeks injunctive and declaratory relief that consists entirely of requiring state officials to comply with a provision of the Wisconsin State Constitution. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

RESPONSE: Any recall or special elections must be conducted under the 2002 boundaries established by this Court, and this Court has authority over claims regarding those

boundaries. *See, e.g.*, Pls.' FOF ¶¶ 342-344, 564-570. Any arguments raised by defendants about the Court's authority to adjudicate state statutory or constitutional issues have been waived by defendants and are not supported by case law. *See Hill v. Blind Indus. & Servs.*, 179 F. 3d 754, 756, 759 (9th Cir. 1999), *amended by*, 201 F. 3d 1186 (9th Cir. 2000).

III. PLAINTIFFS' RESPONSES TO INTERVENOR-DEFENDANTS' PROPOSED CONCLUSIONS OF LAW.

607. **STATEMENT:** Congressional redistricting plans in Wisconsin and all states must comply with the "one-person, one-vote" principle, which the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution has been interpreted to impose.

RESPONSE: No dispute.

608. **STATEMENT:** The Wisconsin Constitution—the applicability of which to this action the intervenor-defendants deny—places no additional restrictions or requirements on the drawing of congressional districts.

RESPONSE: No dispute.

609. **STATEMENT:** After the 2010 Census, the congressional district boundaries reflected in the existing Wis. Stat. ch. 3 (2009–10) had to be replaced by legislation creating districts based on the new census data.

RESPONSE: No dispute.

610. **STATEMENT:** The constitutional responsibility for adopting new congressional districting lines based on census data rests with the legislative and executive branches of state government. *See Perry v. Perez*, 565 U.S. ___ (2012).

RESPONSE: "Redistricting is 'primarily the duty and responsibility of the State.'" *Perry v. Perez*, 565 U.S. ____ (2012) (quoting *Chapman v. Meier*, 420 U. S. 1, 27 (1975)).

611. **STATEMENT:** Numerous state interests necessarily inform the drawing of each of the lines that together make up any congressional districting plan, including that adopted as Act 44.

RESPONSE: No dispute.

612. **STATEMENT:** No provision in the U.S. Constitution (or the Wisconsin Constitution) requires that congressional districting lines adopted by the Wisconsin Legislature conform with so-called "principles" of compactness, communities of interest, or core retention.

RESPONSE: The principles of compactness, communities of interest, and core retention are implicit in the equal protection clause.

613. **STATEMENT:** Neither the intervenor-plaintiffs nor the intervenor-defendants have or could have had any constitutional right to have input into the creation of the map and the congressional district lines that are embodied in Act 44.

RESPONSE: Any right of the intervenor parties to have input into the creation of the map and the congressional district lines embodied in Act 44 is no greater than that of any other citizen of Wisconsin.

614. **STATEMENT:** The plaintiffs and the intervenor-plaintiffs have failed to state a claim upon which relief can be granted as to Act 44, because they have failed to provide the Court with a workable standard with which to measure any purported burden upon their representational rights under the Equal Protection Clause by any political considerations that may have affected the drawing of congressional districts embodied in Act 44.

RESPONSE: Plaintiffs have articulated a judicially discernible and manageable standard for adjudicating political gerrymandering claims. *See* Pls.' Response to Motion for Judgment on the Pleadings (Dkt. 105) at 16-19; Joint Pretrial Report (Dkt. 158) ¶¶ 18-20.

615. **STATEMENT:** The plaintiffs and the intervenor-plaintiffs have failed to show that the provisions of Act 44 could be termed an "excessive political gerrymander" under the U.S. Constitution, even if a workable standard for evaluating such claims were to exist.

RESPONSE: Plaintiffs and intervenor-plaintiffs have shown an excessive political gerrymander in violation of the equal protection clause. *See* Joint Pretrial Report (Dkt. 158) ¶¶ 533-537.

616. **STATEMENT:** Act 44 complies with the Equal Protection Clause and the requirement of "one-person, one-vote" as interpreted by the United States Supreme Court.

RESPONSE: Act 44 complies with the requirement of "one-person, one-vote," but it does not comply with the equal protection clause because it is an excessive political gerrymander.

617. **STATEMENT:** Act 44 does not implicate any recognized First Amendment right of the plaintiffs and intervenor-plaintiffs.

RESPONSE: A political gerrymander can also violate "the First Amendment interest of not burdening or penalizing citizens because of their participation in the electoral process, their voting history, their association with a political party, or their expression of political views." *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring in the judgment).

618. **STATEMENT:** The purported "damage to representative democracy" claimed by the intervenor-defendants cannot and does not support any independent claim for relief.

RESPONSE: The claim referenced is brought under the equal protection clause.

619. **STATEMENT:** Act 44 is constitutional.

RESPONSE: Act 44 is unconstitutional

Dated: February 20, 2012.

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